

REMARKS

This is in response to the Election of Species Requirement. Claims 1-30 were pending in the instant application. Applicants have canceled, without prejudice, Claims 27-30.

Restriction Requirement/Election of Species

The Examiner has issued a restriction under 35 U.S.C. 121 and 372. The Examiner has alleged that the application does not contain inventions or groups of inventions which are linked as to form a single general inventive concept under PCT Rule 13.1.

Group I, claim(s) 1-21, drawn to compounds and pharmaceutical compositions, wherein m is 2, X¹ is N, X⁴ is SO₂Me or C-alkyl, Y¹ is S and Ar is a hetero ring, Q is COOH, X² are C.

Group II, claim(s) 1-21, 27, 28, 30 drawn to compounds and pharmaceutical compositions wherein m is 2, X¹ is N, Y¹ is S, Ar is phenyl, X⁴ is CSO₂Me or C-alkyl (CRg - Rg is alkyl), X² are C.

Group III, claim(s) 1-21, 27, 28, 30, drawn to compounds and pharmaceutical compositions wherein X¹ is a CH or CCH₃, and X₃ is a N, Y¹ is a S, m is 1 or 2, and X⁴ is CSO₂CH₃. X² is C.

Group IV, claim(s) 1-21, 27, 28, 30, drawn to compounds and compositions wherein X¹- X⁴, Y², Ar, and all other variables are other than those as given in the groups above.

Group V, claim(s) 22, drawn to a complex composition drawn to a composition of the compounds of one of the groups above and another active ingredient.

Group VI, claim(s) 23-26, drawn to a method of treating using the compounds of one of the groups from I-IV.

Claim 29 being a use claim is non-statutory has been withdrawn.

The Examiner has alleged that Groups I -IV do not relate to a single general inventive concept because they lack the same or corresponding special technical feature.

Applicants respectfully traverse any restriction of the instant claims.

Applicants assert that, regardless of the groups, the claims of the instant application do possess a single general inventive concept since the compounds of the instant claims comprise a core structure as depicted in Formula I. Applicants maintain that a search of the prior art which focuses on the core structure of compounds of Formula I would be comprehensive with respect to the instant invention yet would not require a serious burden on the Examiner. Section 803 of the M.P.E.P. provides:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (1) The inventions must be independent or distinct as claimed; and
- (2) There must be a serious burden on the examiner if restriction is not required.

Because there would be no serious burden on the Examiner in searching such closely related groups, Applicants respectfully contend that any restriction requirement would be improper. Applicants expressly note that Applicants are not arguing that the group elected by Applicants is not patentably distinct, but rather, contend that the Examiner should examine all of the groups of the instant invention since there would be no serious burden on the Examiner. For the reasons noted above, Applicants respectfully request that the restriction requirement be withdrawn.

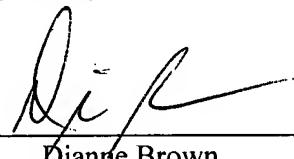
However, to be responsive to the outstanding restriction requirement and to facilitate the Examiner's search under 37 C.F.R. 1.21, Applicants elect, with traverse, Group III, Claims 1-21. However, Applicants would request that X⁴ be defined as C-Rg, where Rg is selected from alkyl or S(O)_n-alkyl, as defined in (3) and (12) of substituent Rg, as suggested by the Examiner in Groups I and II . The Examiner has stated that Applicants must also elect a species. Applicants elect, with traverse, the compound shown in Example 17 of the specification.

Because Applicants have traversed the restriction requirement, they request that any objections directed to misjoinder of invention be held in abeyance. Should the restriction requirement be made final, Applicants believe that the cancellation of the non-

elected subject matter would address any remaining concerns the Examiner may have regarding improper joinder of inventions.

Applicants respectfully contend that Claims 1-21 are allowable. An early Notice of Allowance is earnestly solicited. If there are any fees, please charge Deposit Account No. 13-2755. If a telephonic communication will aid in the acceptance of this amendment, please telephone Applicants' representative listed below.

Respectfully submitted,

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